IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1428 OF 2005

IN

APPEAL FROM ORDER NO. 223 OF 2001

IN

NOTICE OF MOTION NO.60 OF 2001

IN

L.C.SUIT NO.66 OF 2001

Hanif S/o.Haji P.Kunhi Ahmed & Anr. ...Applicants

Versus

The Brihan Mumbai Municipal

Corporation (BMC) & Ors. ...Respondents

.....

Mr.S.P.Srivastava for Applicants.

Mrs.Joglekar for Respondent No.1.

.....

CORAM: A.M.KHANWILKAR, J.

FEBRUARY 1, 2006.

P.C.

1. Heard Counsel for the parties. Perused the Application, in particular, the explanation

offered in Para 4 of the Application.

2. There can be no justification that the clerk missed the matter from the Board. The Advocate on record is equally responsible for watching the Board, as he is personally accountable to the Court for the carriage of the proceedings. Accordingly, this application should fail. However, as the litigant should not suffer for the mistake of the Advocate, indulgence is shown on condition that the Advocate on record himself shall pay cost quantified at Rs.750/- (Rupees Seven Hundred Fifty) to the High Court Legal Services Committee. The Advocate appearing for the Applicant submits that he was not the Advocate on record at the relevant time. If it is so, it will be open to the present Advocate on record to recover the amount to be paid on behalf of the erstwhile Advocate on record, if so advised. The amount of Rs.750/- (Rupees Seven Hundred Fifty) shall be paid within one week from today, as condition precedent for allowing this Application, failing which, the Registry should proceed on the assumption that this Application is dismissed for

non-prosecution without further reference to the Court.

3. If cost is paid and receipt is produced in time before the Registry, the Appeal be restored to the file to its original number to be taken up for hearing as per its turn.

4. In addition to the above condition, the Appellant will be obliged to take steps to serve Respondent No.2 within two weeks from today, failing which, the Appeal from Order be treated as dismissed for non-prosecution by virtue of this order without further reference to the Court, in which case, the cognate Civil Application will also stand disposed of.

5. On the other hand, if the above condition is complied in time, Civil Application No.256 of 2001 be listed under caption orders on 22nd February 2006.

A.M.KHANWILKAR, J.